

## REMARKS

Applicants gratefully acknowledge the courtesies extended by Examiner Riley in granting a telephonic interview on November 7, 2005. In that interview, Examiner Riley indicated that the claim amendments set forth above would place the application in condition for allowance.

Applicants note that the Official Communication mailed September 15, 2005 did not include a period for reply. As set forth in 37 CFR §1.134, “[a]n Office action will notify the applicant of any non-statutory or shortened statutory time period set for reply to an Office action. *Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed.*” (emphasis added). Since no time period was set in the Official Communication, Applicants respectfully submit that this response is timely filed within six months of the mailing date of September 15, 2005 (i.e., on or before March 15, 2006). Accordingly, it is respectfully submitted that no extensions of time are required for filing this response.

Claims 9 and 22 have been canceled. Claim 27 is directed to the subject matter of original Claim 9. Claim 22 has been rewritten as Claim 28. No new matter has been added and entry is respectfully requested.

Applicants gratefully acknowledge the allowance of Claims 7, 8, 11, 13, 14, 20, 21 and 23-25 (Official Communication mailed September 15, 2005).

In the Official Communication, it was indicated that the application contains Claims 9, 10, 12, 15-19 and 22 drawn to a non-elected invention and that a complete reply must include cancelation of the non-elected claims or other appropriate action.

Claims 9 and 22 have been canceled. Further, withdrawn Claims 10, 12 and 15-19 depend from generic Claim 7 which has been allowed. In addition, Claim 22 has been rewritten as Claim 28 and Claim 9 has been replaced with Claim 27. Claims 27 and 28 also depend from allowed Claim 7. It is respectfully submitted that Claims 10, 12, 15-19, 27 and 28 are no longer properly withdrawn. In particular, the MPEP states that “[w]hen all claims to each of the additional species are embraced by an allowable generic claim . . . applicant must be advised . . . that claims drawn to the non-elected species are no longer withdrawn since they are fully embraced by the allowed generic claim.” MPEP §809.02(c). Further, Claim 27 is directed to a method of using the product of Claim 7. As set forth in the MPEP §, “. . . when a product claim is found allowable, applicant may present claims directed to the process of making and/or using the patentable product by way of amendment . . .” MPEP §821.04. Claim 26 also depends from claim 7, and is therefore also patentable. Accordingly, allowance of Claims 10, 12, 15-19, and 26-28 is therefore respectfully requested.

**CONCLUSION**

In view of the above amendments and remarks, Applicants respectfully request a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

November 8, 2005

Date

P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
Telephone No. (202) 326-0300  
Facsimile No. (202) 326-0778

**23552**

Patent & Trademark Office

Respectfully submitted,

MERCHANT & GOULD P.C.



Steven B. Kelber  
Registration No. 30,073

Christopher W. Raimund  
Registration No. 47,258